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Walter D. Cruickshank
Acting Director
Minerals Management Service
Department of the Interior
381 Elden Street
MS-4024
Herndon, Virginia 20170-4817
Attn: Rules Processing Team (RPT)

Re: Comments of the National Hydropower Association on the Minerals Management Service's Advanced Notice of Proposed Rulemaking Regarding Alternate Energy-Related Uses on the Outer Continental Shelf. RIN 101-AD30

Mr. Cruickshank:

The National Hydropower Association (NHA) appreciates this opportunity to provide the following comments on the development of a regulatory program within the Minerals Management Service (MMS) for the development of alternate energy technologies on the Outer Continental Shelf (OCS).

NHA is a non-profit national association dedicated exclusively to advancing the interests of the U.S. hydropower industry. It seeks to secure hydropower's place as an emissions-free, renewable and reliable energy source that serves national environmental and energy policy objectives. Its membership consists of more than 140 organizations including; public utilities, investor owned utilities, independent power producers, equipment manufacturers, environmental and engineering consultants and attorneys.

In addition to traditional hydropower technologies, NHA members are at the forefront of the development of new ocean energy technologies, including off-shore wave, wind and tidal/current projects. As such, the Association has a particular interest in the outcome of the regulatory program implementing Section 388 of the Energy Policy Act of 2005.

In its review of the ANOPR, NHA worked cooperatively with the Ocean Renewable Energy Coalition (OREC) and cite the following Guiding Principles as outlined in OREC's comments. NHA supports these Guiding Principles and believe they address the key issues necessary to fully encourage and support ocean energy technology development.

In the view of NHA and OREC, a successful off-shore alternate energy regulatory program within MMS should include:

1. A Permitting Process that Resolves Agency Jurisdictional Conflicts – the MMS program should provide a streamlined, coordinated process that minimizes duplication of effort by federal and state agencies.
2. A Balance between Comprehensive Orderly Development and Individual Initiatives – MMS should support individual efforts to develop offshore resources as it also moves forward with a program of comprehensive development.
3. Permitting Approvals that are Practical and Proportionate to Individual Projects – regulatory approvals should be appropriate to the type of project proposed and its potential impacts.
4. Exemptions for Demonstration Projects – a successful regulatory regime must include a clearly defined program for pilot technologies and demonstration plants.
5. A Balance between Competition and Technological Innovation – issuance of leases on a competitive basis should also include consideration of a broad range of factors, including adaptability to a particular environment, cost and potential benefits.
6. A Broad View of a Project's Non-Monetized Public Benefits – the program should take new approaches to valuation for purposes of determining royalties, appropriate surety amounts and other lease costs.
7. Flexibility and Forward Looking – as technology is continuing to change and move forward, sufficient flexibility is needed to accommodate this innovation.
8. A Differentiation between Near-Term and Long-Term Goals – as MMS embarks on the development of a long-term multi-use program, accommodations are necessary for projects that are ready to move forward now.
9. Sufficient Funding and Support – MMS should commit the necessary funding and support to ensure success of the OCS leasing program.

With respect to these principles, NHA believes resolving conflicts of authority between agencies with potential jurisdiction over off-shore alternate energy projects, in particular that of the Federal Energy Regulatory Commission (FERC), is of primary concern. FERC's authority under the Federal Power Act and that of MMS under EPAct 2005 could be viewed as overlapping and potentially conflicting. This poses a serious complication to efficient and orderly development of ocean energy technologies on the OCS. NHA supports, as OREC recommends in its comments, that the two agencies cooperate to resolve these issues, potentially through the use of a Memorandum of Understanding.

In addition, developing an interim process by which projects can continue site investigation and development while the MMS adopts final regulations is also critical. Development of these technologies, some of which have the ability to move forward now, will be stifled if they are forced to delay planning and work for several months or years as MMS finalizes its program. Such delays will only serve to deprive the country of needed, additional, clean and domestic energy.

NHA will continue to be engaged in the MMS process as this initiative advances and looks forward to working cooperatively with the Service. For any additional information on these comments, please feel free to contact NHA's Linda Church Ciocci or Jeffrey A. Leahey, Esq. at 202.682.1700, x.22 and x.15.

Sincerely,

A handwritten signature in cursive script, reading "Linda Church Ciocci". The signature is written in dark ink on a light-colored background.

Linda Church Ciocci
Executive Director